

Appl. No. 10/699,277
Docket No. 8473MR2L
Customer No. 27752

REMARKS

Claim Status

Claims 1-3, 5, 6, 8, 9, and 23-28 are pending in the present application. No additional claims fee is believed to be due.

Claims 10-22 are canceled without prejudice and are being pursued in a divisional filing.

Claims 4 and 7 are canceled without prejudice.

Claims 1, 5, 8, 23, and 27 have been amended. Support for the amendments are found in the claims as filed and in the specification page 28, lines 1-11.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

The Rejection Under 35 USC § 102(b)

Claims 1-5 are rejected under 35 USC § 102(b) as being anticipated by DesMarais et al. US 5,260,345. The Examiner states that DesMarais teaches a foam composition comprising an open-celled structure and teaches that HIPE is the preferred foam. Applicants respectfully traverse the Examiner's rejection on the basis of the amendment and comments below.

Under § 102, anticipation requires that all the claim elements appear in a single prior art document. "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

DesMarais discloses absorbent foam material suitable for use as or in the absorbent cores of absorbent articles, such as diapers which absorb and retain aqueous body fluids. See Abstract. DesMarais never teaches or suggests composition suitable for oral administration to an animal for the purpose of sequestering one or more lipophilic materials present in the gastrointestinal tract of the animal, wherein the composition comprises a non-digestible, non-absorbable, open-celled polymeric foam comprising a polymeric material; wherein said polymeric foam is a high internal phase emulsion foam.

Therefore, DesMarais does not disclose each and every element of the present application; it cannot as a matter of law anticipate the present application.

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Claims 1-3 are rejected under 35 USC § 102(b) as being anticipated by Park et al. US 5,750,585. The Examiner states that Park teaches an open-cell foam and methods of orally administering said foams and treating obesity. Applicants respectfully traverse the Examiner's rejection on the basis of the amendment and comments below.

Under § 102, anticipation requires that all the claim elements appear in a single prior art document. "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... claim." MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989).

Park discloses hydrogel foams which can be used to deliver pharmaceutical materials. (See Column 15, lines 10-14). Park Also discloses that the hydrogel foams can be used to reduce the space in the stomach. Park never teaches or suggests composition suitable for sequestering one or more lipophilic materials present in the gastrointestinal tract of the animal, nor that the polymeric foam is a high internal phase emulsion foam.

Therefore, Park does not disclose each and every element of the present application; it cannot as a matter of law anticipate the present application.

Rejection Under 35 USC §103(a)

Claims 1-9 and 23-28 have been rejected under 35 USC §103(a) as being unpatentable over Park et al. US 5,750,585 in view of Niazi US 6,251,421. The Examiner states that Park teaches an open-cell foam and methods of orally administering said foams and treating obesity. The Examiner states that Niazi discloses a pharmaceutical composition comprising a lipase inhibitor. Applicants respectfully traverse this rejection based on the remarks contained herein.

The Park reference discloses hydrogels which are described at column 3 to column 4, starting at line 50 of column 3. The hydrogels of Park are prepared by introducing a gas into a monomer solution comprising at least one *hydrophilic* olefin monomer compound. The hydrogels of Park are not disclosed as HIPE foams and are not formed from an emulsification process using hydrophobic monomers. The compositions of Park are formed by introducing gas into a hydrophilic olefin monomer solution during polymerization of the monomer. Thus, the

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compositions of Park and the present invention are not the same. The compositions of Park are not HIPE foams. In addition, the only mention of treatment of gastric conditions by Park is as a physical barrier due to the large swelled size of the hydrogels of Park such that the large swelled hydrogel reduces the amount of physical space in the stomach. There is nothing in Park that teaches or suggests that the hydrogels would sequester one or more lipophilic materials.

Niazi discloses a composition that contains lipase inhibitors. Niazi does not teach or suggest combining enzyme inhibitors with foam.

Park discloses that the hydrogels absorb large amounts of water, and swell a great deal. There is no teaching or suggestion in Park or Niazi that would have lead one of skill in the art to produce an HIPE foam that sequesters lipids, or to combine such a foam with a lipase inhibitor. Thus, there is no teaching or suggestion in any of the cited references that would have lead one of skill in the art to combine lipase inhibitors with HIPE foam.

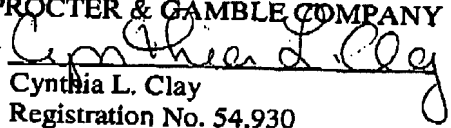
Accordingly, Claims 1-3, 5, 6, 8, 9, and 23-28 are novel and nonobvious over the prior art of record. Reconsideration and withdrawal of the rejection on this basis are requested.

Conclusion

In light of the remarks and amendments presented herein, Applicants respectfully submit Claims 1-3, 5, 6, 8, 9, and 23-28 are allowable over the cited references. Reconsideration and allowance are respectfully requested. In the event that issues remain prior to allowance of the noted claims, then the Examiner is invited to call Applicant's undersigned attorney for further discussion.

Respectfully Submitted,

THE PROCTER & GAMBLE COMPANY

By 
Cynthia L. Clay
Registration No. 54,930
(513) 622-0291

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